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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA

14 v.

15 ALVIN FLORIDA, JR.,  
16 ROBERT ALHASHASH RASHEED,  
17 JOHN LEE BERRY, III, and  
18 REFUGIO DIAZ,

19 Defendants.

CASE NO. CR 4:14-00582 PJH

**GOVERNMENT’S PROPOSED INSTRUCTION  
REGARDING COOPERATORS’ TESTIMONY  
AND OPPOSITION TO DEFENDANTS’  
PROPOSED INSTRUCTION**

Court: Hon. Chief Judge Phyllis J. Hamilton

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21 On November 8, 2016, the Court directed the parties to meet and confer with respect to  
22 government’s proposed instruction 40. The parties met and conferred and have been unable to reach a  
23 resolution. At 2:11 pm today, the defendants filed their own proposed language (Dkt. 315). In response,  
24 the government submits its proposed instruction below. The government’s proposed instruction is  
25 nearly identical to the language of Ninth Circuit Model Jury Instruction 4.9, with the only exception  
26 being that the government’s instruction adds that the witnesses “testified pursuant to a cooperation  
27 agreement.” The defendants’ proposed additional language – that the witnesses are “hoping for further  
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1 consideration at a future time” – is not located anywhere in the model instruction. In addition, it is  
2 vague and confusing – it is unclear what “further consideration” means here. There is no need to believe  
3 that the model language is inadequate and requires supplementation.

4 The defendants also cite the jury instructions in *United States v. Cervantes*, No. 12-CR-00792-  
5 YGR, Dkt. 1437 (N.D. Cal. Aug. 11, 2016), but the *Cervantes* instructions apply to testifying witnesses  
6 who apparently received varied benefits from the government, such as compensation and immunity. By  
7 contrast, this case involves a simpler situation, where all of the cooperating witnesses are testifying  
8 pursuant to essentially the same, standard cooperation agreement.

9 The government still intends to file a complete set of jury instructions at 4pm and will include  
10 the instruction on the following page.

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12 Dated: November 9, 2016

Respectfully submitted,

13 /s/  
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16 MANISH KUMAR  
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TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES – IMMUNITY,  
BENEFITS, ACCOMPLICE, PLEA

You have heard testimony from Doug Ditmer, Danli Liu, Brad Roemer, Miguel DeSanz, and Jorge Wong, witnesses who pleaded guilty to a crime arising out of the same events for which the defendants are on trial and who testified pursuant to a cooperation agreement. These guilty pleas are not evidence against the defendants, and you may consider them only in determining these witnesses' believability.

For this reason, in evaluating the testimony of these witnesses, you should consider the extent to which or whether their testimony may have been influenced by this factor. In addition, you should examine his or her testimony with greater caution than that of other witnesses.